QUESTIONING A WITNESS AS TO HIS BELIEF IN A SUPREME BEING.—The Court of Appeals decision that a witness cannot be questioned as to his belief in a Supreme Being who will punish false swearing, overruling an earlier case, *Stanbro* v. *Hopkins* (1858) 28 Barb. 266, has removed in New York the last trace of the old common law rule that atheists and persons not Christians could not testify. *Brink* v. *Stratton* (1903) 68 N. E. 148. It was urged in the later case that although a witness cannot be excluded from testifying by reason of being an infidel he may be interrogated as to his belief, and his infidelity be considered by the jury on the question of credibility. But the Court held that the provision in the New York Constitution "And no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief" prevents not only the exclusion of a witness but also any interrogation as to his religious belief. (Const. 1846, art. I, sect. 3).

According to Coke, in his day, persons who were not Christians had no standing in the English courts, 7 Coke 17b, though his statement has been much disputed. The theory of the common law was that there could be no guaranty of truthfulness without an oath which was a solemn appeal to the Creator that the truth only should be witnessed; therefore no one was competent to take it who had not a religious sense of accountability to a Supreme Being who would punish him if he swore falsely. In 1744 it was held that the testimony of witnesses not Christians was competent provided they believed in a God and future rewards and punishments; but the testimony of atheists was still considered inadmissible. WILLES, C. J. said, "I am clearly of the opinion that if the witnesses do not believe in a God or future rewards and punishments, they ought not to be admitted as witnesses." *Omychund* v. *Barker* 1 Atk. 45. The point next debated was whether it was necessary for the witness to believe in a future state of existence or whether a mere belief in his accountability to a Supreme Being was sufficient. It finally became established in England and America that belief in a future life was unnecessary. Greenleaf Evid. (16th ed.) § 369, note. Some of the cases held such belief went to the question of credibility. In *Blair & Hulton* v. *Seaver* (1856) 26 Pa. St. 277 the court said: "Whether the punishment will be temporary or eternal, inflicted in this world or that to come, is immaterial upon the question of competency. It is for the jury to say whether the credibility of the witness is affected by his belief in the extent of the penalty to be incurred by false swearing, or his want of belief in the Christian religion." Accord, *Hunscom* v. *Hunscom* (1818) 15 Mass. 184.

To-day constitutional provisions similar to the New York provision are general. The principal case brings to a fitting conclusion the gradual development from the narrow common law rule laid down by Coke. It is however opposed by some cases. In *State* v. *Elliott* (1877) 45 Iowa 486 it was held competent to prove as affecting the credibility of one whose dying declarations were introduced that he believed in no God or future conscious existence. See also *Free* v. *Buckingham* (1879) 59 N. H. 225; *Searcy* v. *Miller*

(1881) 57 Iowa 613. *Perry's Case* (1846) 3 Grat. 632 and *Bush* v. *Commonwealth* (1882) 80 Ky. 244, cited by the court in the principal case as supporting its decision, decided only that under the constitutions of Virginia and Kentucky religious belief was not a ground of incompetency. The question of credibility did not arise.

A NEW PHASE OF THE ELEVATED RAILROAD LITIGATION.—Again the "Elevated Railroad Cases" have been brought into prominence by the advent of a new question, at once important and interesting, marking a last effort of the company to halt the litigation of damage suits. The plaintiff, an abutting owner on Sixth Avenue, brought the usual action for the infringement of his easements of light, air and access. The defendant company answered that by the continuous operation of its road since 1879 it had acquired a prescriptive right to maintain it in the future without liability. To rebut this evidence the plaintiff then proved that the company had made a voluntary settlement with many of the abutting owners; had instituted condemnation proceedings against others and had petitioned for a reduction of its franchise tax on the ground that there were claims to the amount of $8,000,000 yet unsettled. All this evidence, the plaintiff alleged, showed an admission of the title of the abutting owners to their easements and evinced an attitude of subordination to their rights. The court decided that these facts successfully met the defendant's claim of an adverse user of the easements in controversy. *Hindley* v. *Met. Ry. Co.*, (N. Y. Sup. Ct. 1903) 30 N. Y. L. J. 834. The company having at the outset erected and maintained its road in hostility to the abutting owners and in derogation of their rights, if they have maintained that attitude throughout the twenty years, it may be said, under New York decisions, that they have gained a prescriptive right. *Lewis* v. *R. R. Co.* (1900) 162 N. Y. 202. The defendant might more properly, however, have rested its defence upon the ground that the easements in question had been extinguished by reason of a twenty years' interruption under an adverse claim. *Woodruff* v. *Paddock* (1892) 130 N. Y. 618. The case would probably be decided in the same way, however, on either theory of defence. The analogy between adverse possession and prescription has to-day become practically complete; the twenty years' user prescribed by statute has been adopted by the courts as the prescriptive period, the idea of immemorial user having been obsolete for a century. *Campbell* v. *Wilson* (1803) 3 East. 292; *Nichols* v. *Wentworth* (1885) 100 N. Y. 455; Washburn on Easements, p. 125 et seq.

It remains then to consider the probative force of the plaintiff's evidence in rebuttal. The court took the view that the facts adduced tended to show that under the pressure of repeated adverse adjudications the company changed its attitude to one of subordination to and recognition of the abutting owner's rights, and that in voluntary settlements and the institution of condemnation pro-